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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 7 Miscellaneous

STEPHEN S. CHANDLER, United States District Judge
for the Western District of Oklahoma,
Petitioner,

v.

JUDICIAL COUNCIL OF THE TENTH CIRCUIT
OF THE UNITED STATES,
Respondent.

ON PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

AMICUS CURIAE BRIEF

Carl L. Shipley
1108 National Press Building
Washington, D. C. 20004
Amicus Curiae

Of Counsel:
Shipley, Akerman & Pickett
National Press Building
Washington, D. C. 20004

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IN THE

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OCTOBER TERM, 1967

No. 3 Miscellaneous

STEPHEN S. CHANDLER, United States District Judge
for the Western District of Oklahoma,
Petitioner,

v.

JUDICIAL COUNCIL OF THE TENTH CIRCUIT
OF THE UNITED STATES,
Respondent.

ON PETITION FOR WRIT OF MANDAMUS
AND/OR PROHIBITION

AMICUS CURIAE BRIEF

I have asked to appear in this case as a friend of the Court with the hope that I can help place this case in its proper perspective. The constitutional and ethical questions involved are of vital national importance and the Court should not inadvertently place its stamp of approval upon the usurpation of power and violation of judicial ethics and constitutional rights involved in this action by failure to act.

I do not appear as an advocate in support of Petitioner personally although I must advise the Court that I have become familiar with the underlying facts involved by

reason of having voluntarily represented Petitioner in three actions brought by a disbarred lawyer in retribution for Petitioner's official act in disbarring him. I entered those cases at the request of lawyers of the District who originally volunteered to represent Judge Chandler, as did I, in the instant case when they first read in the headlines of the local press of the entry of the unprecedented and punitive order.

While I do not approach the case to seek vindication for Judge Chandler I am appalled by what has happened to him. I am here for the purpose of helping point out plainly to this Court both sides of the coin and the unhappy result if the Court fails to address itself to the vital ethical and constitutional questions involved. This Court should promptly decide this action on its merits.

The Court should adjudicate this matter at once for three reasons. First, adverse criticism of this Court may follow a failure to do so. Second, grave questions of judicial ethics are involved. And third, there is a clear violation of the constitutional concept of division of powers.

FACTS

In December 1965 a majority of the members of the Judicial Council of the Tenth Circuit, a statutory administrative body composed of United States Circuit Judges but vested by Congress with no judicial power whatever, secretly signed an instrument entitled "Order," with the designation Circuit Judge after each signature, directed to Judge Chandler, a duly appointed, confirmed and qualified United States District Judge, filed the "Order" in the Office of the Clerk of the United States Court of Appeals for the Tenth Circuit, ordered the Clerk of the United States District Court for the Western District of Oklahoma to file it and had it served on Judge Chandler by the United States Marshal for the Western District of Oklahoma. The facts and dates have been presented to this Court repeatedly and are incorporated by reference. (See No. 3 Misc., Oct. Term 1967. *Chandler v. Judicial Council,* No. 1111, Oct. Term 1965.)

By its terms this instrument constituted a multiple judicial Writ of Prohibition prohibiting him from proceeding further in more than 150 cases in various stages of the judicial process over which he legally had acquired exclusive jurisdiction and in which he was then sitting. It also divested him of the power to act in cases thereafter filed, thus effectively divesting him of the power of his office. Specifically it provided "that until the further order of the Judicial Council" Judge Chandler "shall take no action whatever in any case or proceeding now or hereafter pending in the United States District Court for the Western District of Oklahoma."

This purported Writ of Prohibition also imputed to him dereliction in office. It was signed, filed, released to news media and served on Judge Chandler without prior notice, without hearing or trial, without constitutional or statutory jurisdiction and without a semblance of due process.

ARGUMENT

In order to be able to look at this matter in the correct perspective the responsibility for the creation of the situation now confronting the Court must be placed where it belongs. It should not be assumed that Judge Chandler was guilty of improper conduct justifying the entry of the illegal order by the Council or is responsible for the ensuing damage to the judiciary as a whole caused by its improvident entry. He was clearly the victim. Since that time, he has acted only in defense of his jurisdiction and his personal civil rights handicapped by noteworthy judicial restraint. For the reason that he was not accorded due process, he must be accorded the absolute presumption of judicial competence and innocence of wrong. No evidence dehors the record may be considered. The order itself and the admissions of Respondent made in this action constitute the entire record. It must be presumed that the dire implications of the order are false, and that Judge Chandler's docket was current, which his pleadings herein assert.

Nor is it proper to think that he should abdicate his official duty to defend his jurisdiction and now drop this litigation in the interest of judicial harmony in order to protect the Members of the Council from possible embarrassment and this Court from the unpleasant duty of correcting the Council's error.

Judge Chandler doesn't care a snap for personal vindication. He does not need it. He is not interested in causing further embarrassment to the judges responsible for this mess. His actions do show that he cares a great deal for the sanctity of the judicial system and the independence of the trial judiciary. He could have mooted the case by retiring years ago but for the obligation he feels to his brother trial judges to obtain an adjudication of the questions involved.

Both the mortal wound to Judge Chandler and this unnecessary judicial tangle were occasioned by the unconstitutional acts of the judges who signed the order. It shows on its face that the action was taken unlawfully and after long deliberation. The purpose of the order was and its effect has been to obstruct, impede and prevent a United States District Judge from performing his duties. Until this Court acts to strike it down, it continues daily unlawfully to deprive Judge Chandler of new cases, and stands as a precedent inviting repetition.

The experienced Circuit Judges who signed the order must be presumed to have known that the Council had no such constitutional or statutory power. By no stretch of the imagination could such a Congressional grant of authority to discipline District Judges by the imposition of sanctions be read into any existing statute. They must also be presumed to have known that even if the Council had jurisdiction to enter such a punitive disciplinary order, Petitioner was at least entitled to constitutional due process.

It appears clearly upon the face of the order that the judges signing it deliberately arrogated unto themselves "supervisory" and disciplinary jurisdiction over the trial

branch of the judiciary and having done so, that they deliberately exercised it without due process by the entry of a punitive disciplinary order against a trial judge. This in effect constituted a multiple Writ of Prohibition, a Bill of Attainder, a criminal conviction of official dereliction, and deprived Judge Chandler of the powers of his office in disregard of those rights which it has traditionally been the duty of judges to protect.

It may be that the judges who signed the order were misinformed as to the facts with regard to Judge Chandler and were deluded into a sincere belief that it was their duty to save the country from a derelict judge and that the end justified the means. It may be that their zeal in the imagined righteousness of the cause led them to act without the judicious forethought and sagacity to be expected of qualified judges. But the false statements in the order and the finding that Judge Chandler was guilty of dereliction in office belie the claim the Council now makes that his docket was too heavy and they were merely helping him dispose of it.

In any event it is immaterial what misconception, if any, of fact or law the Council may have been laboring under or why it entered the "Order." It was entered without due process, and was clearly intended to destroy Judge Chandler as a judge. The judges who signed the punitive order are guilty of unbridled usurpation and abuse of judicial power flagrantly violative of all American precepts of judicial ethics and propriety.

The action of the Council in trying to mislead the Court in its pleadings and its letter of September 18, 1967, and thus to delay or prevent decision is distressing and hardly less reprehensible than the entry of the order. The futility of the apparent hope of the Council that Judge Chandler, who is in good mental and physical health, will die or just fade away, or that he will retire under the cloud of the Order, points up the urgent necessity and wisdom of an early adjudication by this Court.

The Supreme Court of the United States is not a forum in which the Council should be permitted longer to play cat and mouse in an effort to obscure the issues and delay adjudication in disregard of Judge Chandler's constitutional rights. Surely this Court should not indirectly approve the use of such defense tactics by failure to act promptly and effectively to correct the original wrong.

The Chairman of the Senate Judiciary Subcommittee on Judicial Machinery very aptly said, on March 4, 1966, just after the Council entered the order against Judge Chandler:

> "Moreover a Judge whose conduct of fitness is questioned unjustifiably is entitled to have his name cleared promptly."

The Court should not fail promptly to decide these important issues; otherwise there is danger to the survival of our constitutional concept of an independent judiciary. The Council's order is a flagrant attempt to usurp the power of the legislative branch of Government and legislate itself "supervisory" power over Federal trial judges, thus destroying their independence.

The Solicitor General of the United States should review this case, and confess judgment in favor of the Petitioner.

Each day decision is delayed compounds the wrong against Judge Chandler and the injury to the judicial system as a whole. A Federal trial judge has actually been found "unfit" and "defrocked" without trial by judges without even a color of jurisdiction. Could there be any case now before the Court where such a constitutional violation of the rights of a citizen has so long gone unredressed? Where constitutional and judicial ethical questions of greater importance are involved? Where such delaying tactics have been used in the defense of an action?

The Council cannot by order restore Judge Chandler's office to him. More important, it cannot restore his good name. Only this Court can do so by striking down the unconstitutional Bill of Attainder and the unwholesome legal precedent and the Court surely has the clear duty to do so.

A quotation from a statement by Senator Ervin to the Senate Judiciary Subcommittee on February 15, 1966, shortly after the order was entered by the Council puts the matter in focus:

> "The action of the Judicial Council of the Tenth Circuit in dismissing Judge Chandler was unwarranted and precipitous, and I agree completely with Justices Black and Douglas that the Supreme Court should have stayed the Order. As the Subcommittee knows, the Judicial Council relied on the third paragraph of 28 USC 332 in what I consider to be a monumental example of statutory misconstruction. As Justice Black has said, there is absolutely nothing in the language or legislative history of this Act that could be construed as authorizing the Council to strip a United States District Judge of his powers. To divine removal powers in this Act which grants the Council mere administrative or housekeeping authority is to unscrew the inscrutable. At best, the Council's action was presumptuous and denied Judge Chandler even elementary due process in defending himself; at worst, it could be disastrous to the independence of the Judiciary.
>
> "All Judges—even circuit judges—are human beings, and, as such, may be tempted to read mental incapacity into the actions and opinions of those with whom they consistently disagree. *If the action of the Tenth Circuit Council is allowed to stand, then any Circuit Council could easily decide to remove from the effective occupancy of this office any district judge whose official action displeases it any way,* especially where this Council can cite some eccentricity of temperament or personality. *It was from this eventuality that the Framers protected us* when they wrote Article II, Sec. 4 into the Constitution." (Italics supplied)

Not only this Court but all courts are now on trial by the public. A failure to resolve this matter may be considered an *implicit* approval by this Court of the deliberate

usurpation of power by the judges who are Members of the Tenth Judicial Council. It amounts to a "Star Chamber" Bill of Attainder against a named federal judge (*United States v. Archie Brown*, 381 U.S. 437, 14 L.Ed.2d 484, 85 S.Ct. 1707).

The original nationwide publicity incident to this case aroused great public interest and concern which the delay in adjudication has increased. The public is entitled to know what this Court thinks. The public is entitled to know whether the Circuit Judges were derelict or whether Judge Chandler was. And, of course, all United States District Judges are quite anxious to know whether they can now be disciplined like schoolboys and have no recourse in this Court.

The Judicial Council has broken through the jurisdictional boundaries imposed upon the entire judiciary by the Constitution and has transgressed the impeachment powers of the Congress and deprived Judge Chandler of his constitutional rights under Article III, Section I.

There is no defense for such abuse of power and it is important that this Court act at once to redress the wrong.

Respectfully submitted,

CARL L. SHIPLEY
1108 National Press Building
Washington, D. C. 20004
Amicus Curiae

Of Counsel:
SHIPLEY, AKERMAN & PICKETT
National Press Building
Washington, D. C. 20004

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